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ABSTRACT

Research on child care quality and experience in the field shows that the quality of working conditions are linked to a caregiver's ability to provide quality care. Noting that legal rights that generally apply to most child care teachers are not upheld in every workplace, this guide provides information on federal legal rights of child care teaching staff. Issues discussed in the guide's question-answer format include: overtime pay, training during non-work hours, interview questions, employment contracts, and union organizing. Four appendices include state Family and Medical Leave Act (FMLA) information, and a list of federal agencies that enforce the laws discussed in the guide. (HTH)

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Rights in the Workplace

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A Guide for Child Care Teachers

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Rights in the Workplace:
A Guide for Child Care Teachers

A resource from the
National Center for the Early Childhood Work Force
and the Worker Options Resource Center

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Rights in the Workplace:
A Guide for Child Care Teachers

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Worker Options Resource Center

Rights in the Workplace:
A Guide for Child Care Teachers

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Introduction

In working with child care teaching staff around the country, we have had many discussions about the connection between teachers' working conditions and their ability to provide the best care and education possible for children. It is clear from daily experience in the field, and from research on child care quality that the quality of child care and the quality of child care *jobs* are firmly linked. In essence, what is good for teachers is good for children.

Teachers commonly describe good jobs as those which include:

- equitable wages;
- benefits that include health care coverage and retirement provisions;
- a fair working environment that upholds every employee's personal rights;
- opportunities for professional growth;
- good working relationships with co-workers and supervisors;
- an environment that supports good early care and education practices, such as reasonable adult/child ratios, adequate materials and space, and paid preparation and planning time for staff; and
- respect for each teacher's knowledge, experience and commitment to children.

While many of these aspects of the job are negotiated or worked out informally between teachers and employers, there are some fundamental legal employment rights that generally apply to most child care teachers. Unfortunately, these legal rights are not always upheld in every workplace,

and when such breaches happen, they undermine the quality of teachers' working lives and the quality of care that children receive.

In response, we have created this guide to the federal legal rights of child care teaching staff. It includes answers to commonly-asked questions, resources for further information, and a list of the federal agencies that enforce the laws referred to in the guide. The 50 states and many cities and communities also have employment laws of their own that may grant additional or different rights to workers; in any case, no state or local government may pass a law that denies any rights that are granted under federal law.

Please keep two things in mind as you read this booklet. First, the guidance it contains is for information purposes only. The booklet is not a legal opinion about all of the rights, requirements, exceptions or remedies that may apply to child care teachers in general or in specific situations. Readers with specific questions about their rights or remedies in particular situations should contact an attorney, one of the organizations listed in Appendix A, the appropriate federal agency listed in Appendix D, or a state or local agency that enforces employee protection laws.

Second, although it is important to know your rights and to take appropriate steps to protect them, remember that enforcement of many of the federal laws we describe can take a very long time and can become very expensive. For example, it usually takes months and sometimes years for the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB) or a court to issue decisions; in the meantime, lawyers' fees and other expenses related to enforcing your rights can grow. For that reason, it is often important to have the support of co-workers, an organization such as NCECW, or a union or professional association to help you enforce your rights.

Questions and Answers

1. When am I entitled to overtime pay? At what rate? Does it have to be paid or can it be compensatory time? Am I entitled to overtime or any other higher rate of pay if I work on holidays, weekends or my scheduled days off?

Under federal law, the first 40 hours you work in a given work week are considered regular time. If you work more than 40 hours, the additional hours beyond 40 are overtime hours. When you work overtime, your employer must pay you at your regular rate for the first 40 hours and at an overtime rate for all hours more than 40. The overtime rate is "time and a half" your regular rate—in other words, 1.5 times your regular pay rate. For example, if you are normally paid an hourly rate of $6.00, your overtime rate would be $9.00. If you are paid on some other basis, such as a certain amount per week or month, your employer must determine what your pay is per hour, and your overtime pay would be 1.5 times that hourly rate.

At present, federal law generally prohibits your employer from substituting compensatory time off for extra pay for any overtime you work. There is a limited exception to this rule for public employees working for state or local governments. Under certain circumstances, these public employees may receive compensatory time off instead of extra pay for their overtime.

> ***Please note:*** *Congress may change the law regarding compensatory time off in 1997 or 1998. Therefore, if a question arises in the future about whether your employer may substitute time off for overtime pay, you should contact the Wage and Hour Division of the Department of Labor (see Appendix D), NCECW or one of the other groups listed in Appendix A to find out what the law requires.*

Under federal law, you are not automatically entitled to overtime pay or any special rate simply because you work on

holidays, weekends or scheduled days off. These days count as normal work days. You only become entitled to overtime if you actually work more than 40 hours in a week. If you belong to a union, the union's contract with your employer may establish special "premium" rates for work on holidays, weekends or days off. Some state laws also establish special rates for holiday or weekend work. Check with your union representative or a local attorney (see Appendix A for help) to determine whether such special rates apply to you.

2. Am I entitled to any paid breaks or lunch periods? Must I be allowed to go off premises during breaks or lunches?

Federal law does not specifically require employers to give workers paid breaks and lunch periods. The Wage and Hour Division of the U.S. Department of Labor, which enforces the federal wage and hour laws, has adopted rules to determine when breaks must be counted as paid work time. Under these rules, if your employer lets you take short breaks of five to 20 minutes for coffee, snacks, using the bathroom or similar purposes, these breaks are considered "rest periods" that are counted as work time, and your employer must pay you for them.

Your employer, however, does not have to pay you for longer breaks that are meal periods. In order for a meal period to be unpaid time, it generally must last at least 30 minutes, and your employer cannot require you to do any work during that period. If your employer requires you to do any work at all during that time—even reading a report, answering phones, or caring for a sick child—the break does not qualify as a meal period, and you must be paid for it.

Federal law does not require your employer to let you leave the premises during your break.

3. Can my employer change my work hours or schedule without my approval?

For most child care teachers, the answer is probably yes. It is not against federal law for your employer to change your hours or schedule, even if you disapprove of the change. Of course, if your employer increases your hours such that you end up working for more than 40 hours in a work week, the overtime rules described in Question 1 would apply.

If you belong to a union, the collective bargaining agreement between your union and employer may limit your employer's power to make changes in your schedule without approval from you or your union. Check with your union representative if such a situation arises.

4. What do I do to pursue a grievance at my workplace? When do I have the right to pursue a grievance beyond my center's owner or board?

Although employers are generally not legally required to have a formal grievance procedure, many child care programs have developed one as part of a personnel manual or employment contract. A grievance procedure is an internal system that individuals can use to work out conflicts when informal methods fail. It usually includes requirements such as:

- ***who*** can initiate a formal complaint;
- ***how*** the complaint can or must be initiated (e.g. verbally and/or in writing; as a group and/or only individually);
- ***who*** receives the complaint (e.g. immediate supervisor, director, board of directors);
- ***when*** the complaint must be filed and responded to (e.g. within a certain number of working days);

- ***how*** the resolution of the complaint will take place (e.g. in writing, in a meeting, or in a particular series of steps).

If your employer has a grievance procedure and you have a workplace problem covered by the procedure, you should follow all of its steps very carefully. If you are represented by a union, your union steward may be available to help you pursue your internal grievance.

Whether you have a right to pursue a grievance or complaint beyond your immediate employer or board depends on whether such a right exists under: 1) your center's grievance procedure, personnel manual, or employment contract; 2) a union contract; or 3) federal or state laws regulating employment practices. Even if you have the right to pursue your grievance or complaint beyond your workplace, in many situations you may prefer not to do so, and to try instead to resolve the problem internally. This approach can save time and money and can help avoid hard feelings. There are some situations, however, that are better handled by outsiders. If you feel that you need to pursue a complaint beyond your center's owner or board, check first whether any of the following considerations apply:

- Does your workplace have a grievance procedure that applies to your job? If so, it may describe whether and how you can pursue a grievance beyond your employer, for example, by submitting the claim to an outside arbitrator who has the power to issue a final decision. If there is an internal grievance procedure at your center, you will probably have to follow all of its steps carefully in order to protect your right to pursue the grievance beyond your workplace.

- Are you a member of a union that has a collective bargaining agreement or other contract with your employer? If so, that agreement probably includes

a grievance procedure that also may allow you to pursue your claim beyond your employer. Ask your union representative to explain the grievance procedure to you and to assist you in filing your complaint.

- Does your employer's action violate federal or state law or some specific guarantee in your personnel manual or contract? For example, if your employer is not paying you the minimum wage or overtime pay, or is treating you differently because of your race, sex, age or disability, these actions may be against the law. You may be entitled to challenge these actions in a complaint before a federal or state agency or in court. In addition, several states allow workers to file lawsuits in state court against employers who violate their personnel procedures or employment contracts or who engage in other unfair practices. The rules governing such lawsuits vary, so check with an attorney in your state to determine whether you can pursue this step.

If you are involved in an employment dispute of any sort, it is often useful to keep a diary or other record of each incident that occurs and the people involved. This will help you support your claim if and when an investigation takes place.

Question 13 provides more specific information about your rights under federal employment laws. Appendix A lists several organizations you can contact for further information about these laws, or for help in identifying attorneys to advise you more fully about your rights under federal and state laws. Appendix D provides information about the federal agencies that enforce these laws.

5. Must I be paid if I attend job-related, required training outside my normal work hours?

Yes. If your employer **requires** you to attend lectures, meetings or other training programs outside your normal

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working hours, you must be paid for that time, whether or not the training is job-related. The law considers that you have been "required" to attend training and are entitled to pay if your employer or supervisor specifically asks you to attend or leads you to believe that your job or working conditions may be unfavorably affected if you don't. However, you are not entitled to be paid for training, even if it is directly job-related, if you decide on your own that you want to attend and your employer in no way requires you to do so.

6. If I work for an organization that employs child care staff along with other employees doing different work, do pay equity laws apply to my position?

Under some circumstances, if women are paid less than the men they work with, the difference in pay may be unlawful discrimination. In order for any employment discrimination law to apply, however, female workers and the male workers they're comparing themselves to must work for the same employer.

For example, if you work for a hospital that employs teachers in its child care center and other workers in different departments, the hospital is the employer for all of these workers and may not unlawfully discriminate against any of you. But if you work for a company that has a contract to provide child care services at a hospital, you are probably not an employee of the hospital and generally cannot be compared to the hospital's employees for pay equity or other purposes.

If you and the men to whom you compare yourself work for the same employer, there are two federal laws that may enable you to challenge pay differences:

The Equal Pay Act requires employers to provide equal pay to men and women who are doing substantially equal work.

Employers are not allowed to discriminate in pay based on sex, but they may pay male and female employees differently based on factors such as differences in seniority, past experience or performance ratings.

Normally, the Equal Pay Act applies to situations in which women and men are doing almost identical work. However, you do not have to prove that your job or job title are identical to a man's in order to win an Equal Pay Act case. For example, if a male child care teacher spent 90 percent of his time doing work exactly like yours but 10 percent repairing broken playground equipment, your jobs may still be considered substantially equal, even though there are slight differences. Many courts would find that the jobs are enough alike that they should be paid at the same rate.

Title VII of the Civil Rights Act prohibits an employer from discriminating in pay based on the sex, race, national origin or religion of employees. The Title VII requirements apply even when male and female workers are performing different jobs. If a teacher can show through convincing evidence that the reason her employer pays her less than men doing different work is because she is a woman or because she works in a female-dominated job, this might be enough to prove a violation of the law that would entitle the teacher to back pay and a wage adjustment. These "pay equity" cases are extremely hard to win, however, because the courts require very strong proof of sex discrimination. You should consult an attorney or an expert before attempting to pursue a pay equity claim.

A number of states have adopted various pay equity laws that apply to teachers who are public employees. In these states, it may be somewhat easier for child care teachers who are public employees to establish a legal claim. Appendix B has further information about these state pay equity laws.

7. Am I eligible for parental leave under the Family and Medical Leave Act of 1993 (FMLA)?

The federal Family and Medical Leave Act (FMLA) requires some employers to provide parental and medical leave to "eligible employees" under specific circumstances. Many child care teachers are not protected by the FMLA, however, because it does not cover small employers. In order to be an "eligible employee" covered by the FMLA, you must show that you:

- work for an employer that employs at least 50 employees at your work site or at several locations within 75 miles of where you work;
- have worked for that employer for at least 12 months; *and*
- have worked for that employer at least 1,250 hours during the 12-month period before the beginning of the requested leave.

If you meet all of these requirements, the FMLA requires your employer to give you up to 12 weeks of unpaid leave during a 12-month period in any of the following situations: to give birth or to adopt a child or to accept a child into foster care; to care for the child within the first 12 months; to care for a spouse, child or parent with a serious health condition; or to take care of your own serious health condition that prevents you from performing your job functions. You must give your employer 30 days' notice of your intention to take FMLA leave unless you are unable to do so, in which case you must provide whatever notice you reasonably can.

The FMLA also requires your employer to continue to provide you with certain benefits and job protections during your leave and when you return to work. For example, your employer must continue your group health insurance coverage while you're on FMLA leave. Your employer

cannot require you to give up any rights or benefits that you had earned (such as seniority) before you took the leave. Generally, your employer must reassign you to your original job or an equivalent position when you return, and provide the same pay and benefits you were earning before you took the leave. There are limited circumstances that excuse an employer from meeting these requirements.

8. Should I have an employment contract? What workplace rules apply to me if I don't?

Generally, employment contracts are not required, and few child care teachers have them. You do not have a legal right to demand a contract from your employer. If your employer offers you a contract or requires you to have one, make sure you read and understand its terms carefully.

There are advantages and disadvantages to having an employment contract. On the plus side, a contract with clear provisions about working conditions, benefits and requirements for advancement will give you a better understanding of your employer's expectations and your rights on the job. A contract may also create a grievance process that helps you challenge unfair practices. In addition, in some states, an employer's failure to follow the contract would entitle you to file a lawsuit.

On the other hand, an employment contract could work to your disadvantage. For example, it may include a provision that requires you to resolve all of your disputes with your employer through arbitration rather than in court. If you sign such an agreement, you may be giving up your right to file employment discrimination charges with agencies such as the Equal Employment Opportunity Commission or lawsuits in state or federal court.

Even if you do not have an employment contract, other documents sometimes create rights and obligations that may

be enforced as if they were employment contracts. For teachers who belong to unions, the collective bargaining agreement between the union and the employer is basically an employment contract. In addition, some courts have treated employee personnel manuals as if they were employment contracts, especially if workers are required to sign statements indicating that they have received and reviewed the manuals and agreed to comply with their terms.

Most workplaces are governed by one or more federal, state or local labor and employment laws. Some of these, like the minimum wage law, cover almost all work sites; others, such as federal employment discrimination laws, are more restricted and apply only to workplaces that employ a certain number of workers. Assuming your center is governed by any of these laws, their requirements apply whether you have a contract or not.

Question 13 provides further information about the federal employment laws.

9. What questions should I *not* be asked in an interview?

Most federal employment discrimination laws do not prohibit an employer from asking particular questions during interviews, though employers should not ask questions that do not have a valid purpose and that might reflect a discriminatory motive. Interview questions related to an applicant's race, sex, marriage or parental status, national origin, color, or age could be considered evidence of discrimination if there was no valid reason for the questions; if the employer did not ask other candidates the same questions; and/or if the employer refused to hire the applicant or took other unfavorable actions against her.

For example, it is not against the law for an employer to ask questions such as "Are you a Miss or Mrs.?," "How old are you?," or "Where are you from?," as long as the reason for

the questions is non-discriminatory. But the fact that you were asked such questions might be evidence of discrimination if you were fully qualified for the job and the employer refused to hire you, but instead hired someone whose characteristics were different—for example, if you are married and the employer hired only single women; if you're over 40 and the employer limited its work force to younger women; or if your family is originally from Mexico and the employer hired only non-Hispanic women. Remember that there are often many reasons for an employment decision, so the mere fact that you were asked a question does not prove that the employer discriminated against you.

It is specifically against federal disability law for employers to ask interview questions about whether an applicant has a disability or about the nature or severity of a disability. Employers may ask, however, about an applicant's ability to perform the essential functions of a job, and may require an applicant to describe or demonstrate how she would perform those functions.

10. If layoffs occur, must they be in order of seniority?

There is no law that requires private sector employers to conduct layoffs in order of reverse seniority—that is, the most recently hired would be the first to be let go. Employers are generally free to lay off workers without considering seniority, and may take many factors into account in making their decisions. Seniority protections may exist, however, in a union contract, personnel manual or other company policies, or, for public employees, under civil service laws. If there are such seniority protections, your employer generally has to honor them.

11. If I am injured on the job and need medical assistance, am I covered under Workers' Compensation? How do I file a claim for my medical expenses?

Workers' compensation programs are administered by states. Most states require employers to provide workers' compensation coverage for any employee who is injured on the job or who develops an illness caused by conditions in the workplace. Rules about the amount of benefits or how long they last vary among the states. In most states, workers' compensation benefits include payments reflecting a share of lost wages, reimbursement for medical costs and rehabilitation services, and death benefits. Most states also provide for payment of attorney fees if you have to pursue legal action to recover benefits.

Generally, workers are required to report injuries promptly in order to qualify for compensation. In most states, workers' compensation programs are administered by the state Department of Labor or Department of Industrial Relations, although a few states have separate workers' compensation agencies. Most states require employers to put up notices telling their employees about the procedures they must follow if they are injured in order to recover monetary benefits. If you are injured on the job, find this notice, read it, and carefully follow its directions.

12. What are my rights to join a union or to organize co-workers into a union at my job?

The National Labor Relations Act (NLRA) was enacted by Congress to define, encourage and protect the rights of employees *in the private sector* to organize into unions and to bargain with their employer through representatives of their own choosing. The NLRA is enforced by the National Labor Relations Board (NLRB) and its regional offices throughout the country. The NLRB's chief functions include enforcing the rights of unions, employees and employers by

investigating and prosecuting charges of unfair labor practices, and conducting elections to decide if employees wish to join a union.

Employees have the right under Section 7 of the NLRA to join or support a union and to engage in various activities in exercising that right. These activities include things such as attending meetings, wearing buttons, or urging co-workers to join the union. Under Section 8 of the NLRA, it is unlawful for an employer to punish or discriminate against a worker for engaging in union activity. For example, it is against the law for an employer to threaten to fire or to actually fire workers because they support a union. Despite these legal protections, it is not unusual for employers to interfere with the right to join a union or to take unfavorable action against workers who exercise that right. Therefore, it is wise to seek the advice of a labor lawyer, union representative or other expert before undertaking union activities.

To establish a union at a workplace, a majority of the employees must express support for the union. In most situations, the employees prove majority support through a secret-ballot election conducted by the NLRB. After a union's election victory is officially certified by the NLRB, the employer is legally required to negotiate "in good faith" with the union to develop a written contract governing wages, hours and working conditions. This good-faith bargaining duty does not mean that the parties must reach an agreement, but it does mean that the employer must deal directly with the union and take reasonable steps designed to reach an agreement.

If you believe your employer has violated your rights under the NLRA, you may file a charge with the appropriate regional office of the NLRB. The charge must be filed within six months of your employer's unlawful action. After you have filed a charge, the NLRB will consider the case and, if

your case has merit, the NLRB will advise you of any further legal rights you may have.

NLRB jurisdiction. Federal labor relations laws do not apply to every child care program. For example, a child care program must have a gross annual income of $250,000 or more before the NLRB will exercise jurisdiction over it. Some child care teachers working for centers affiliated with churches or with public school systems, and some teachers working for multi-site child care companies also are not covered by the NLRA. If the NLRB does not cover your workplace, you may nevertheless be covered by a comparable state law.

Determining whether a center is covered can be very complex and technical. If you have questions regarding coverage of your center, you should consult a labor lawyer, the union you are working with, or the appropriate regional office of the NLRB.

Public employees do not have the right under the NLRA to join a labor union, or to organize their co-workers to form one. Many states extend some protections to organizing by public employees, though the regulations adopted by the states vary. Comprehensive collective bargaining laws for public employees have been enacted in at least 30 states and the District of Columbia, but at least three states (North Carolina, Texas and Virginia) have laws prohibiting collective bargaining by public employees.

13. What labor and employment laws, besides the National Labor Relations Act, apply to my job? Who do I contact if I believe my rights have been violated?

Federal labor and employment laws provide certain basic rights and benefits for workers, and many states have provided additional protections greater than or different from those provided by federal law. The information below

discusses only federal laws. Addresses for the agencies identified below are in Appendix D.

Keep in mind as you read this section that these federal laws do not cover every child care worker. Workers may be excluded from a law's protections because their employer does not have enough employees for coverage; because they work in positions to which the law does not apply (for example, some laws do not apply to workers who are classified as managerial employees); or for some other reason specified in the law. If you believe your employer is violating one or more of these laws, you should consult an attorney or another expert who can advise you, based on your own employment situation and the facts you describe, whether you are covered by the law and whether your employer's actions appear to violate the law.

The Fair Labor Standards Act [29 U.S.C. 201, et seq.]. The FLSA contains the federal minimum wage and overtime requirements. The minimum wage is $4.75 per hour; $5.15 per hour as of September 1, 1997. The FLSA requires that workers must be paid overtime (1.5 times the regular wage) for hours worked in excess of 40 in any work week. Remedies for violations of the FLSA include wage adjustment, back pay and additional money damages in some cases, and attorney's fees. (While the majority of child care workers are covered by the FLSA, some are exempt.)

If you believe your employer is violating your rights under the FLSA, you may file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or you may file a lawsuit against your employer in federal or state court. In general, you must file your complaint within two years of your employer's illegal action. Normally, it is easier and cheaper to file a complaint with the Labor Department than

in court. It is against the law for your employer to retaliate against you for filing a complaint.

The Equal Pay Act [29 U.S.C. §206]. The Equal Pay Act requires employers to provide equal pay for their male and female employees who work in the same establishment performing work that is substantially the same. Differences in pay are permitted for reasons such as differences in seniority, past experience and the like. If you believe your employer is not providing equal pay for equal work, you may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC), or you may file a lawsuit in court. Generally, you must file any such complaint or lawsuit within two years of the equal pay violation. Remedies for Equal Pay Act violations are the same as for FLSA violations.

Title VII of the 1964 Civil Rights Act [42 U.S.C. §2000e et seq.]. Title VII bars employers of 15 or more workers, as well as employment agencies and labor unions, from discriminating against employees or applicants because of their sex, race, color, national origin or religion. Discrimination on the basis of sex includes discrimination based on pregnancy, childbirth, or related medical conditions. Title VII prohibits discrimination in all aspects of employment, including hiring and firing, promotion, wages, fringe benefits, harassment and other working conditions, and access to training and other opportunities. Remedies available for Title VII violations include reinstatement or appropriate job placement, back pay and other monetary awards, and attorney's fees.

To pursue a discrimination claim under Title VII, you must file a charge with the U.S. Equal Employment Opportunity Commission (EEOC). Often, you are also required to file a charge with a state or local fair employment agency. (These agencies have charge forms that they will provide to you.) It's a good idea to ask whichever agency you file the charge with (the EEOC or the state) to file the charge on your behalf

with the other agency. You must file your EEOC charge within 180 days of your employer's unlawful act, but the deadline can be extended to a total of 300 days after the discrimination if you first file a complaint with a state agency. Once you have filed your complaint, the EEOC or state agency will advise you about further proceedings, including your right to file a later lawsuit based on the complaint.

It is unlawful for employers to retaliate against employees who have filed Title VII complaints or who have participated in a discrimination proceeding (for example, by being a witness).

Age Discrimination in Employment Act [29 U.S.C. § 621 et seq.]. The ADEA prohibits employment discrimination against employees or job applicants who are 40 or older, and also bars mandatory retirement based on age. The ADEA covers employers who have at least 20 employees, labor unions with at least 25 members, and employment agencies. The age discrimination protections apply to all aspects of employment, including hiring and firing, wages, fringe benefits, and terms and conditions of employment. The charge filing requirements under the ADEA are basically the same as for Title VII; you must file a charge with the EEOC and with the appropriate state or local agencies. The deadline for filing is 180 days, but it can be extended to 300 days if you first file a complaint with a state agency. The EEOC or state agency will advise you about further proceedings, including your right to file a later lawsuit.

It is illegal for your employer to retaliate against you because you have filed an ADEA complaint or participated in a discrimination proceeding.

Americans with Disabilities Act [42 U.S.C. § 12101 et seq.]. The ADA bars discrimination on the basis of mental or physical disability by employers with 15 or more employees, as well as employment agencies and labor unions. It covers

the same broad aspects of employment as Title VII, and offers similar remedies. In addition, the ADA requires employers to provide "reasonable accommodations" to disabled employees who are qualified to do the job, but who need accommodations to enable them to perform the job's duties. Similarly, an employer may not refuse to hire a qualified job applicant because of her disability, if a reasonable accommodation would enable the applicant to perform the essential or core functions of the job she seeks.

There are no hard and fast rules about what constitutes reasonable accommodations, since adjustments that may be fairly easy for one employer may be difficult for another. Examples include raising the height of a desk to allow a wheelchair to fit underneath it, or providing flexible work schedules, if possible, for employees whose disabilities require rest breaks.

To pursue a claim under the ADA, you must first file a charge with the EEOC or appropriate state or local agency. The procedures are the same as for Title VII.

The Family and Medical Leave Act [29 U.S.C. 2601 et seq.]. The FMLA requires employers with at least 50 employees working at one site or within 75 miles of each other to provide up to 12 weeks of unpaid leave each year to help a worker cope with a) the birth or adoption of a child or the acceptance of a foster child, b) the serious illness of a child, spouse, or parent, or c) the worker's own serious illness. For further information about the FMLA, see Question 7 above.

If you believe your employer has violated your rights under the FMLA, you may either file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or file a lawsuit. You must file your complaint or lawsuit within two years of the last unlawful act by your employer.

The Occupational Safety and Health Act of 1970 [29 U.S.C. §651 et seq.]. The OSH Act requires all employers to provide safe and healthy workplaces that are free of health hazards which pose a risk of serious physical harm to workers. The law is enforced by the Occupational Safety and Health Administration (OSHA) of the Department of Labor. A worker has the right to ask OSHA to inspect her work site to investigate safety concerns, and may request an immediate inspection if she believes imminent danger exists. The agency will not reveal the worker's name to her employer if the worker requests confidentiality.

The OSH Act prohibits employers from retaliating against workers who request inspections or who participate in proceedings under the Act. If you believe your employer has retaliated against you for these reasons, you may file a complaint with the Secretary of Labor within 30 days of the employer's act. If the Secretary determines your complaint is valid and files a lawsuit on your behalf, you may be entitled to appropriate remedies such as rehiring and back pay.

Unemployment Insurance. Unemployment insurance provides cash benefits to workers who become unemployed involuntarily. In most states, workers who voluntarily quit their jobs without good cause or who are fired for misconduct cannot collect unemployment benefits at all, or must wait for a longer period or meet additional requirements before they can receive benefits.

The unemployment system is a combined federal and state program, but each state sets its own standards and requirements for determining which workers can collect unemployment, the amount of benefits they receive, and how long the benefits last. Typically, an unemployed worker receives about half her pay for six months. States may extend benefits for an additional period when unemployment is high. Some or all of the unemployment benefits a worker receives may be taxable, depending on several factors.

Information about unemployment insurance is available from your state's department of employment services listed in the phone book under state government, or from the Unemployment Insurance Service of the U.S. Department of Labor's Employment and Training Administration.

Pension, Health Insurance and Employee Benefits Laws. There is no federal law that specifically requires employers to provide health insurance, pensions or other such benefits for their workers and their workers' families. There are three federal laws, however, that establish certain requirements and protections for workers whose employers voluntarily provide such benefits, either on their own or through a joint employer-union arrangement. These laws are:

- the Employee Retirement and Income Security Act (ERISA), which regulates all covered employee benefits, including health plans and pensions;
- the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), related to continuation of health insurance coverage; and
- the Health Insurance Portability and Accountability Act of 1996, which also relates to health insurance and regulates certain practices of insurance companies.

You may have rights and remedies under these laws if your employer provides health benefits or maintains a pension plan for you. These laws also provide certain protections if you change jobs. The employee benefits laws are complex, however, and their procedures must be followed carefully.

14. Are there any other legal issues, besides these labor and employment laws, that apply to my job?

Yes. While this booklet focuses on labor and employment laws, there are a number of other laws and regulations that apply to child care employment–not only to workers' rights, but to workers' and employers' responsibilities for ensuring the safety and well-being of children. The following examples are not an exhaustive list:

- Each state has its own child care licensing regulations that govern such issues as child/staff ratios, group sizes, and training and education requirements for teachers, directors, family child care providers and other staff.
- All 50 states have child abuse reporting laws which include child care workers among the many categories of people who are "mandated reporters" of suspected child abuse.
- Some states have enacted "whistle-blowing" protections that shield workers from retaliation by an employer for reporting a violation of a law or licensing or other regulation to authorities.

For information on these issues, please contact NCECW, the Child Care Law Center (listed in Appendix A), or your state child care licensing agency.

Appendix A

Helpful Organizations

There are many national and local organizations that can provide further information about the laws discussed in this guide. A few of these organizations are listed below. In addition to providing information about legal protections, they may be able to help you identify local attorneys who could assist you in pursuing claims.

Working Women's Department, AFL-CIO
815 16th St., NW, Washington DC 20006, (202) 637-5390
The Working Women's Department at the AFL-CIO was created in 1996 to be an activist voice and vehicle for all working women. It addresses the many issues of work and home that frame women's lives and define the health and well-being of families.

Child Care Law Center (CCLC)
22 Second St., Ste. 500, San Francisco CA 94105, (415) 495-5498
CCLC is a national nonprofit legal services organization founded in 1978. CCLC's primary objective is to use legal tools to foster the development of high quality, affordable child care.

Equal Rights Advocates (ERA)
1663 Mission St., Ste. 550, San Francisco CA 94103, (415) 621-0672
ERA is a legal organization which addresses women's issues through the legal system, practical advice and public education, building coalitions, and advocacy for public policy solutions that reflect a multi-racial and grassroots perspective.

International Association of Official Human Rights Agencies (IAOHRA)
444 N. Capitol NW Ste. 408, Washington DC 20001, (202) 624-5410
IAOHRA is an association that maintains information about all state and local human rights agencies.

Labor Project for Working Families, Institute for Industrial Relations
2521 Channing Way, Berkeley, CA 94720 (510) 643-6814
The Labor Project is a nonprofit organization which works with labor unions to develop policies to support working families by negotiating for benefits such as family leave, flexible hours, child care and elder care, sick time for families, shorter work weeks and domestic partner benefits.

NAACP Legal Defense Fund (LDF)
99 Hudson St. Ste. 1600, New York NY 10013, (212) 219-1900
For more than half a century, LDF has legal advocacy and litigation to expand and protect the rights of African Americans, other people of color, women and the poor. LDF also monitors laws and government policies, informs the public, supports the efforts of community activists and builds coalitions.

National Committee on Pay Equity (NCPE)
1126 16th St. NW Ste. 411, Washington DC 20036, (202) 331-7343
NCPE provides leadership, information and technical assistance to pay equity advocates, public officials, employers, the media and the public. NCPE acts as a central clearinghouse for information on pay equity activities throughout the U.S. and the world.

National Employment Law Project (NELP)
55 John St.—Seventh Floor, New York NY 10038, (212) 285-3025
NELP is a nonprofit advocacy organization which concentrates its efforts on extending basic employment protections to workfare participants and other welfare recipients forced into the low-wage labor market. It also works to ensure access to quality job-training and education programs and expand job protections and improve working conditions for the working poor and contingent workers.

National Employment Lawyers Association (NELA)
600 Harrison St. Ste. 535, San Francisco CA 94107, (415) 227-4655
NELA is the country's only professional organization that is exclusively comprised of lawyers who represent individual employees in cases involving employment-related matters. NELA also promotes the workplace rights of individual employees through legislation and other activities.

NOW Legal Defense and Education Fund (NOW LDEF)
99 Hudson St. New York, NY 10013 (212) 925-6635
Established by the National Organization for Women as a separate organization, NOW LDEF pursues equality for women and girls in the workplace, the schools, the family and the courts, through litigation, education and public information programs.

National Women's Law Center
11 Dupont Circle NW Washington DC 20036, (202) 588-5180
The National Women's Law Center is a nonprofit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families including employment, education, reproductive rights and health, family support and income security—with special attention given to the needs of low-income women.

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9to5—National Association of Working Women
238 Wisconsin Ave. #700, Milwaukee WI 53203, (414) 274-0925
9to5 empowers working women to win rights and respect on the job, and focuses on issues affecting office workers. Current campaigns include winning family-friendly policies, making jobs flexible and fair, eliminating workplace discrimination, and helping women make a successful transition from welfare to work.

Women Employed (WE)
22 W. Monroe St. Ste. 1400, Chicago IL 60603, (312) 782-3902
WE's mission is to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service and public education. Resources include fact sheets on sexual harassment prevention, the wage gap between men and women, the glass ceiling, employment rights in the workplace, pregnancy rights in the workplace and facts about the Family and Medical Leave Act.

Women's Legal Defense Fund (WLDF)
1875 Connecticut Ave. NW Ste. 710, Washington DC 20009, (202) 986-2600
The WLDF works for equal opportunity for every American, and for policies that fight discrimination on and off the job, enable women and men to balance work and family responsibilities, help women and families achieve economic security and provide comprehensive health care for women and families.

Work and Family Clearinghouse—Women's Bureau, US Dept. Of Labor
200 Constitution Ave. NW Rm. 3317, Washington DC 20210, (202) 219-4486
The Work and Family Clearinghouse provides statistical information on the status of women in the work force. The Clearinghouse also conducts seminars and workshops on issues relating to women, such as non-traditional jobs, work and family issues, child and dependent care, women business owners and women's job rights.

Appendix B

State Pay Equity Activities

Child care workers who are government employees have benefited from some states' activities on pay equity. The following summary of pay equity activity in the states is taken from information provided by the National Committee on Pay Equity (NCPE). For further information, contact NCPE at 1126 16th Street, NW, Suite 411, Washington, DC 20036; (202) 331-7343.

States that have implemented comprehensive pay equity adjustments, raising the wages for women and minority employees working for the state:

Connecticut	Iowa	Minnesota
New York	Oregon	Washington
Wisconsin		

States that have implemented partial pay equity adjustments, affecting one or more female-dominated or disproportionately minority job categories for workers employed by the state:

California	Connecticut	Florida
Hawaii	Illinois	Iowa
Maine	Massachusetts	Michigan
Minnesota	New Jersey	New Mexico
New York	Oregon	Pennsylvania
Rhode Island	South Dakota	Virginia
Washington	Wisconsin	

Virtually all states have undertaken some type of pay equity research and data collection activities. In addition, most of the states listed above, and a few others, have conducted pay equity studies to identify sex and race discrimination in the states' own wage-setting practices.

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Appendix C

State FMLA Information

The following summary of state family leave laws is based on information provided by the Women's Legal Defense Fund. For further information, contact WLDF at 1875 Connecticut Ave. NW, Suite 710, Washington D.C. 20009, (202) 986-2600.

A number of states have adopted family and medical leave laws similar to the FMLA (Family and Medical Leave Act) that require covered public and private employers to give employees time off to care for new children; to care for seriously ill family members; or to attend to their own serious health conditions. These states are: California (50 or more employees); Connecticut (75); District of Columbia (20); Maine (25); Rhode Island (30); Vermont (10); and Wisconsin (50). (The figures in parentheses indicate the number of employees required for coverage.)

The following states require covered public and private employers to provide family leave for their workers to care for newborn or newly adopted children or for seriously ill children, spouses, or parents: Hawaii (100 or more employees); New Jersey (50); and Oregon (50, to care for ill family member; 25, for new child).

Minnesota (21 or more employees) and Washington (100) guarantee that workers are entitled to reinstatement in their jobs after they take parental leave to care for newborn or newly adopted children.

The following states have adopted family and/or medical leave laws that apply only to state employees: Alaska and Georgia (family and medical leave laws covering care for new children, sick family members, and the employee herself); Colorado, Florida, Illinois, North Dakota, Oklahoma and West Virginia (family leave laws covering care for new children and for sick family members); Nevada, Pennsylvania and Virginia (parental leave laws); and Delaware (leave for the adoption of a minor child).

Appendix D

Addresses of Key Federal Agencies

Listed below are the addresses and phone numbers of the federal agencies which enforce the laws discussed in this guide. These agencies can also direct you to their regional or district offices close to you, or to state and local agencies that enforce similar laws.

For information about federal minimum wage, overtime, and family and medical leave laws, contact:

United States Department of Labor
Employment Standards Administration
Wage and Hour Division
200 Constitution Ave., NW
Washington, DC 20210
(202) 219-4907 (minimum wage & overtime)
(202) 219-8412 or (800) 959-FMLA (family & medical leave)

For information about workers' compensation programs in the states, and the federal program for federal employees, contact:

United States Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs
200 Constitution Ave., NW
Washington, DC 20210
(202) 219-7503

For information about federal and state laws and procedures involving discrimination based on race, sex, color, national origin, religion, age and disability, contact:

United States Equal Employment
Opportunity Commission
Office of Program Operations
1801 L Street, NW
Washington, DC 20507
(202) 663-4801

For information about federal laws involving pension, health insurance and other employee benefits plans, contact:

United States Department of Labor
Pension Welfare Benefits Administration
Office of Program Services
Division of Technical Assistance and Inquiries
200 Constitution Ave., NW Room N5625
Washington, DC 20210
(202) 219-8776

For information about federal and state laws involving workplace safety and health requirements, contact:

United States Department of Labor
Occupational Safety and Health Administration
Information—Consumer Affairs
200 Constitution Ave., NW
Washington, DC 20210
(202) 219-8148

For information about states' unemployment insurance offices and programs, contact:

United States Department of Labor
Employment and Training Administration
Unemployment Insurance Service
200 Constitution Ave., NW
Washington, DC 20210
(202) 219-7831
(ask for referral to appropriate office)

For information about locations of NLRB offices and federal labor law protections and procedures for challenging unfair labor practices, contact:

National Labor Relations Board
Public Information Office
1099 14th Street NW
Washington, DC 20005
(202) 273-1991

About NCECW and WORC

NCECW is a nonprofit research, education and advocacy organization committed to improving the quality of child care by upgrading the compensation, working conditions and training of child care teachers and family child care providers. It coordinates two efforts to promote leadership development in the field: the Early Childhood Mentoring Alliance and the Worthy Wage Campaign.

WORC serves as a support center for activists working at the federal, state and local level to improve the pay, benefits and other employment conditions of low-wage and contingent workers, most of whom are women and people of color. Through its program combining research, education, advocacy, technical assistance and support for coalition-building, WORC seeks to identify workplace problems and solutions, raise public awareness and support, and secure meaningful employment and economic reforms on behalf of these workers.

NCECW Membership Application Form

Complete this form and mail to:

National Center for the Early Childhood Work Force

733 15th St. NW, Ste. 1037 Washington DC 20005, or fax (202) 737-0370

Please submit one form per member; photocopied forms are welcome!

Regular Membership—Receive NCECW's biannual newsletter and a 10% discount on selected NCECW resources. Teachers and providers pay $15.00	$30.00
Comprehensive Membership—Receive all the benefits of regular membership, plus action alerts, resource materials and other mailings from (check one): ☐ Worthy Wage Campaign ☐ Early Childhood Mentoring Alliance ☐ Both Teachers and providers pay $25.00	$50.00
Publications Subscription—Receive one copy of each new NCECW report issued during the year. Members pay $50.00	$75.00
Lifetime Membership—Entitles you to the benefits for life of both comprehensive member and publications subscribers. (Check off under Comprehensive Membership your desired mailings.)	$500.00
Total Membership Dues (calendar year)	
Additional Tax Deductible Donation	
GRAND TOTAL	

Form of Payment: ☐ Visa ☐ Mastercard

☐ Check/Money or Purchase Order, No. _____

Card Number Exp. Date

Signature

Name

I currently work as a: ☐ teacher ☐ family child care provider
☐ center director ☐ child care advocate
☐ program developer ☐ trainer
☐ Head Start staff ☐ CCR&R staff
☐ other _____

Organization

Address

City, State and Zip

Phone, Fax and E-mail

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